

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of) NOTICE OF PUBLIC HEARING
ARM 24.171.401 fees, 24.171.512 inactive) ON PROPOSED AMENDMENT
license, 24.171.702 transfer of river-use days,) AND ADOPTION
24.171.2301 unprofessional conduct and)
misconduct, and the proposed adoption of)
NEW RULES I - III pertaining to guide logs)

TO: All Concerned Persons

1. On December 8, 2006, at 1:00 p.m., a public hearing will be held in room 471, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Outfitters (board) no later than 5:00 p.m., December 1, 2006, to advise us of the nature of the accommodation that you need. Please contact Debbie Tomaskie, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2373; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsout@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of an ongoing rule review process, the board determined it is reasonably necessary to generally update the board's administrative rules. Most of the amendments are technical in nature, such as the modification of punctuation and style to comply with ARM formatting requirements. Other technical changes include renumbering within rules following amendment of the rules and substituting neutral terms for gender specific language. Accordingly, the board believes that there is reasonable necessity to generally amend the existing rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.171.401 FEES (1) Fees for outfitters, operations plan, guide, or professional guides shall be as set forth below. The following fees are nonrefundable.

(a) through (e) remain the same.

(f) Annual fee for each additional hunting camp, added after January 1, 1999, 5000

and located beyond a 100-mile radius of the outfitter's base of operations and that is in an Department of Fish, Wildlife, and Parks administrative region other than the region containing the outfitter's base of operations

(g) through (i) remain the same.

(j) Nonresident outfitters, guides, or professional guides will pay the fee their residency state charges for the similar license if in excess of the amount established by the board for the license. Otherwise they will pay the Montana resident fee.

(k) through (n) remain the same.

AUTH: 37-1-131, 37-1-134, 37-47-201, 37-47-306, MCA

IMP: 37-1-134, 37-1-141, 37-47-304, 37-47-306, 37-47-307, 37-47-308, 37-47-310, 37-47-316, 37-47-317, 37-47-318, MCA

REASON: The board has determined that it is reasonable and necessary to amend this rule to correspond with language in 37-47-318, MCA, by clarifying that the administrative regions referenced in the rule are those designated by the Montana Department of Fish, Wildlife, and Parks.

24.171.512 INACTIVE LICENSE (1) An outfitter may submit a written request to have ~~his or her~~ the outfitter's license placed on inactive status at the time of renewal. Such request must be submitted with a completed application for renewal and all required renewal fees.

~~(2) An outfitter may have his license placed on inactive status for a period not exceeding the remainder of the license year in which the request is made, and may not remain inactive for more than one consecutive licensure year without approval of the board on an annual basis.~~

(3) through (5) remain the same but are renumbered (2) through (4).

AUTH: 37-1-319, MCA

IMP: 37-1-319, MCA

REASON: It is reasonable and necessary to amend this rule and delete the requirement that outfitters wishing to remain on inactive status obtain board review and approval on an annual basis. This requirement was time consuming for board staff and it was determined by the board to be unnecessary for the adequate protection of the public. It is reasonable and necessary to amend the rule prior to the next license renewal cycle so inactive licensees have timely notice of the elimination of this requirement.

24.171.702 TRANSFER OF RIVER-USE DAYS (1) ~~When a fishing outfitter transfers all river-use days that have been allocated to that fishing outfitter as part of the complete sale or transfer of a business, and~~ If requested by either the outfitter-owner transferring the river-use days or the prospective new owner receiving them, board staff shall determine the outfitter-owner's record of river-use days to ensure accuracy of the allocation of river-use days to be transferred.

(2) remains the same.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-201, 37-47-310, MCA

REASON: The question of a potential discrepancy between statutory language at 37-47-310, MCA, "any river-use days," and the current language proposed to be stricken from this rule, "all river use days," was brought to the board. The board has determined that reasonable necessity exists to amend this rule and delete the potentially conflicting language. The board determined that maintaining potentially misleading language in this rule does not clarify the implemented statute.

24.171.2301 UNPROFESSIONAL CONDUCT AND MISCONDUCT

(1) through (1)(i) remain the same.

(j) personally collect, or designate an agent to collect, all fees from clients.

The outfitter is solely responsible for complying with ~~his or her~~ the outfitter's deposit and deposit refund policy;

(k) maintain current, true, complete, and accurate records at all times;

(l) remains the same.

(m) obtain and maintain a reasonable degree of supervision over the guide or professional guide to ~~insure~~ ensure that the services offered are being provided in accordance with the laws and rules, with particular regard to those laws and rules pertaining to the health, safety, and welfare of the participants, the public, and landowners;

(n) through (2)(b) remain the same.

(c) not provide services to clients who have not been specifically referred to the guide or professional guide from the endorsing outfitter; and

(d) when advertising guiding services, shall clearly designate the license number of the guide, and the name, address, and telephone number of the endorsing outfitter.

(3) remains the same.

(a) provide services with respect for the rights of others, private and public property, and provide for the health, safety, and well-being of their clients, employees, and the general public;

(b) through (d) remain the same.

(e) not use any narcotic drug, alcohol, or any other drug or substance, to the extent that the use impairs the user physically or mentally, while engaged by a client;

(f) remains the same.

(g) not conduct a licensed function that is not authorized and listed on ~~his or her~~ the licensee's license;

(h) not harass, assault, or abuse clients, employees, outfitters, guides, or professional guides, or members of the general public, verbally or otherwise;

(i) and (j) remain the same.

(k) clearly designate who the responsible outfitter is in any advertisement of outfitting, guiding, or professional guiding services;

(l) carry ~~his or her~~ the licensee's current license at all times when providing services;

- (m) not have hunting or fishing privileges suspended, revoked, placed on probation, or voluntarily surrendered in the state of Montana or any other jurisdiction;
- (n) through (q) remain the same.
- (r) not fail to respond to board inquiries and requests; or
- (s) not remit a "nonsufficient fund check" or a check on a closed account for board fees or fines; or
- (t) maintain a current, true, complete, legible, and accurate log book of all individuals guided on the Beaverhead and Big Hole rivers, and submit the log books to the board office postmarked by December 1 of each license year.

AUTH: 37-1-319, 37-47-201, ~~37-47-341~~, MCA
IMP: 37-1-312, 37-47-341, MCA

REASON: The board has determined it is reasonable and necessary to add the above language to the existing unprofessional conduct rule in order to identify noncompliance with NEW RULES I, II, and III as unprofessional conduct and to avoid potential confusion among licensees. Authority cites are being amended to accurately reflect the sources of the board's rulemaking authority.

5. The proposed new rules provide as follows:

NEW RULE I GUIDE LOG BOOKS FOR BEAVERHEAD AND BIG HOLE RIVERS (1) Guides, or outfitters working as guides, shall:

- (a) maintain a current, true, complete, legible, and accurate log book of all individuals guided on the Beaverhead and Big Hole rivers; and
 - (b) make the current log book available for inspection by board staff or an agent of the board at any time while providing services on these two rivers.
- (2) Guides, or outfitters working as guides, shall:
- (a) ensure the log book is current before departing on these two rivers; and
 - (b) keep the log book current to the day at all times while providing services.
- (3) All log books will be submitted to the board office, and must be postmarked no later than December 1 of each license year. Failure to present a current log book for inspection, or submit the postmarked log books by December 1 of each license year, will be deemed unprofessional conduct.

AUTH: 37-1-131, 37-1-319, 37-47-201, MCA
IMP: 37-47-201, 37-47-301, MCA

REASON: The board has determined that it is reasonable and necessary to adopt NEW RULES I, II, and III to assist with the enforcement of Montana Department of Fish, Wildlife, and Parks (FWP) river-use day regulations on the Beaverhead and Big Hole rivers. Requiring the log books will allow board investigators or FWP wardens to clearly identify which outfitter clients are associated with at the time they are on the river, and board staff will subsequently cross reference the guide logs with the outfitter logs submitted at the end of the year to ensure compliance with the FWP river-use day rules. The board also determined that requiring the ongoing maintenance and inspection of the log books will enable the board to more

immediately address situations of the unauthorized use of river-use days. It is reasonable and necessary to adopt these new rules at this time to ensure the rules are in effect prior to the upcoming 2007 fishing season.

NEW RULE II GUIDE LOG BOOK INFORMATION REQUIREMENTS

(1) Guide log books shall be maintained on forms prescribed by the board and shall contain information as required by the board. The information required shall include but not be limited to:

- (a) names of individuals guided;
- (b) dates individuals were guided;
- (c) individuals automated licensing system (ALS) number;
- (d) stream or lake fished;
- (e) stream section;
- (f) name of the outfitter to whom the clients belong;
- (g) name of guide or outfitter acting as a guide;
- (h) outfitter license number;
- (i) guide license number; and
- (j) year of reported record.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-201, 37-47-301, MCA

NEW RULE III CONFIDENTIALITY OF GUIDE RECORDS (1) Submitted

guide records shall be maintained as confidential information and shall not be released to any person or organization without:

- (a) approval of the board;
- (b) written permission of the outfitter;
- (c) subpoena or order of a court; or
- (d) written request of a state or federal agency for the purpose of furthering investigation of criminal activities.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-201, 37-47-301, MCA

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Debbie Tomaskie, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsout@mt.gov and must be received no later than 5:00 p.m., December 18, 2006.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.outfitter.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text

will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The Board of Outfitters maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Outfitters administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsout@mt.gov, or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

10. A department attorney will be assigned to preside over and conduct this hearing.

BOARD OF OUTFITTERS
KELLY FLYNN, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 30, 2006